IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1072 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

MAHENDRA HIRALAL SOLANKI (EXTERNEE) - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MS DR KACHHAVAH for Applicant(s) : 1,MR KAMLESH KACHHAVAH for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 07/10/2006

ORAL JUDGMENT

1.0 By way of this application, the externee has challenged the order dated 22.09.2005 passed by the Deputy Police Commissioner, Ahmedabad respondent No.3 as well as order dated 17.04.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.2.

2.0 Learned Advocate for the externee has

invited my attention to the show-cause notice dated 05.11.2004 issued by respondent No.3. In the said show-cause notice, five offences have been mentioned as registered against the externee. Thereafter, order dated 22.09.2005 was passed by the respondent No. 3 externing the externee.

3.0 The externee has challenged the order of externment on various Counts. However, learned Advocate for the externee, has restricted his arguments to the aspect of delay in passing the order of externment, only. He has submitted that the order of externment passed by the externing authority is bad in law on the ground that show-cause notice was issued on 05.11.2004 whereas the order of externment was passed by the Authority on 22.09.2005 i.e. there is a delay of about ten months which is not explained by the Authorities. He has further submitted that the externing authority has also not considered the provisions and objectives of the Act, and hence,

in view of the unexplained delay of about ten months, order of externment deserves to be quashed and set aside. In support of his Case, learned Advocate has placed reliance on a decision of this Court in the case of ***"Dilaji Bharatbhai Vihol Vs. Deputy Commissioner of Police and Anr."*** reported in 2006(1)GLH 513 wherein it was held as under,

> "From the record it appears that in this case show-cause notice was issued on 16.04.2004 whereas final order of externment was passed on 25.07.2005. Even if we take that meanwhile detention order dated 01.11.2004 was quashed and set aside by the Hon'ble High Court on 10.03.2005 and considering that fact detaining authority could not have passed the externment order. Therefore, whereas show-cause notice was issued on 16.04.2004 and order of detention under PASA Act was quashed and set aside on 10.03.2005 and again there is delay of four month. In my view authority has not explained delay in passing the order. Therefore, unexplained delay is fatal to the case and therefore order of externment deserves to be quashed and set aside. On this very ground of delay and taking over all view of the matter,particularly, provisions of externment, in my view externing authority must satisfy subjectively that no witnesses are willing to come forward to depose against the petitioner before passing the order of externment. In this case the authority has passed order of

externment after a great delay which could have been avoided in this behalf. Therefore, the order passed by the externing authority is unreasonable and unjustifiable in this behalf.

4.0 On the contrary, Learned A.P.P. has supported the orders of the Authorities and has submitted that the authorities are invested with the powers to extern such miscreants from adjoining districts by the provision itself for a period necessary and therefore the order cannot be challenged. However, learned A.P.P. is not able to controvert the aspect of delay in passing the externment order.

5.0 Heard. Considering rival side contentions the only question that needs to be addressed by this Court is whether there was delay in passing the order of externment after issuing show-cause notice to the externee.

5.1 In my view externing authority before passing the order of externment, must satisfy subjectively that no witnesses are willing to

come forward to depose against the externee. In the case on hand show-cause notice was issued on 05.11.2004 whereas the order of externment was passed on 22.09.2005. Therefore, there is a delay of about ten months which has not been explained by the authority while passing the order of externment. It may also be noted that even the externee had filed an appeal before the respondent No.2 raising the very same ground of unreasonable and unexplained delay of about ten months in passing the order of externment, but, the same was not considered by the respondent No.2. On the contrary, by its order dated 17.04.2006 the respondent No.2 confirmed the order of externment passed against the externee which shows non consideration of this vital point by the respondent No.2. Hence, in view of the above discussion and view of the decision of this Court in the case of ***"Dilaji Bharatbhai Vihol Vs. Deputy Commissioner of Police and Anr."*** the order of externment deserves to be modified.

6.0 In view of the above, the application is

partly allowed. **The period of externment is reduced to ONE YEAR only.** The order dated 22.09.2005 passed by the Deputy Police Commissioner, Ahmedabad respondent No.3 as well as order dated 17.04.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.2 are modified to the aforesaid extent. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(K.S. JHAVERI, J.)

Umesh/